

# Exhibit D

MM Docket No. 00-167  
MOTION FOR EXTENSION OF EFFECTIVE DATE OR,  
IN THE ALTERNATIVE, ADMINISTRATIVE STAY

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Children's Television Obligations	)	MM Docket No. 00-167
Of Digital Television Broadcasters	)	
	)	

**DECLARATION OF RICH ROSS**

I, Rich Ross, declare and state as follows:

1. I make this Declaration in support of Petitioners' Motion for Extension of Effective Date, or, in the Alternative, Motion for Administrative Stay of Viacom and The Walt Disney Company. This declaration is based upon my personal knowledge and experience, as well as the knowledge and experience of Disney personnel who work under my supervision.

2. I am President, Disney Channel Worldwide, which is part of the Disney ABC Television Group, a division of The Walt Disney Company. I am responsible for management of over 50 children's television channel feeds around the world. I was promoted to this role in April 2004.

3. Previously, I served as President, Entertainment, Disney Channel, overseeing all programming, production and marketing for Disney Channel, a leading U.S. basic cable television network designed for kids and families that currently reaches 86 million subscribers. From August 1999 to January 2002, I served as General Manager and Executive Vice President, Programming and Production, Disney Channel. I joined Disney Channel in September 1996 as Senior Vice President, Programming and Production.

4. At Disney, I oversaw the creation of Disney Channel's critically acclaimed learning-based programming block for preschoolers, Playhouse Disney, which has since become the centerpiece for a Walt Disney Company-wide initiative to introduce preschoolers to Disney characters and programs through learning-based entertainment. Playhouse Disney shows include TV's first movement-focused series "JoJo's Circus," the hit animated series "Higglytown Heroes" and "Stanley," and the Emmy Award-winning "Rolie Polie Olie."

5. Before joining Disney, I worked at Nickelodeon from 1986-93, where I most recently served as Vice President of Program Enterprises and was involved in all original-programming deals, including those for co-production, and at FX Networks from 1993-96, where I served as Senior Vice President, Development and Production for FX Networks, and was a member of the executive team that launched the cable network.

6. In my current position, I have responsibility for, among other things, general oversight of Disney•ABC Cable Networks Group's children's networks, including Disney Channel and Toon Disney as well as the daily children's programming block on ABC Family (collectively "ABCCNG"), and a Saturday morning children's programming block on the ABC Television Network, known as ABC Kids. I am therefore in a position to attest to the effect on ABCCNG's cable operations and on the ABC broadcast network's ABC Kids of three of the FCC's new rules: the promotion rule, the website reference rule, and the website host-selling rules. These rules, respectively, (1) "count" towards the commercial time limits in the Children's Television Act ("CTA") all promotions of programs that do not qualify as educational and informational ("E/I"), including promotions for same-channel children's programming that does not qualify as E/I; (2) count against the same limits any time spent displaying the URL of a website during program material unless that website meets a four-part test; and (3) prohibit

references to website addresses during program and commercial material when the site uses characters from the program to sell products or services.

7. The Walt Disney Company is a leader in children's television programming and has multiple television platforms that serve children: Disney Channel and Toon Disney; a weekday children's action/adventure programming block on ABC Family; and a Saturday morning children's programming block on ABC. Disney Channel is a 24-hour kid-driven, family-inclusive television network that taps into the world of children and families, with imagination and optimism, through a wide variety of programming. For example, Playhouse Disney, guided by an established and diverse educational curriculum developed in conjunction with educational experts, is a daily programming block on Disney Channel that encourages preschoolers to imagine and learn through original series, short-form "interstitial" programs, and acquired programming. Toon Disney, a 24-hour network, showcases a variety of Disney's classic and contemporary animated series and movies plus a fantastical action/adventure programming block known as Jetix. ABC Kids and the ABCCNG networks together exhibit more than 18,000 hours of child-oriented programming per year. To support this programming, Disney has designed a complex and interrelated series of websites to create an Internet environment in which children and parents can explore, learn, and be entertained together.

8. The programming on ABCCNG's children's networks and on ABC Kids is produced in accordance with a strict code of internal standards and practices and promotes positive and pro-social values. We have invested a tremendous amount of time, money, and effort to ensure that these programs are responsible, fun, age-appropriate entertainment for children. The common threads in all of our programming are diversity, inclusion, and positive values for children and their families.

**The New Promotion Rule Will Harm ABCCNG and ABC Kids Financially, Have a Disruptive Impact on Their Operations, Impede Their Creative Freedom, And Interfere With Their Ability To Attract Viewers And Develop Our Brand**

9. The new promotion rule will harm ABCCNG and ABC Kids in a number of ways. First, the new rule will compel difficult and costly trade-offs between promoting our own programming and accepting advertising to support the costs of such programming. Either we must sacrifice revenue that could fund new, innovative children's programming, or we must greatly reduce our capacity to promote our own shows on our own channels, with corresponding declines in viewership, consumer goodwill, and brand development—or both.

10. Second, the new rule will force us to radically restructure our operations in order to meet the considerable burden of coming into compliance with the new rule and monitoring to ensure compliance going forward. Such restructuring will have an enormous and disruptive impact and will require us to expend extensive time and money. We have already taken steps to try to comply with the new rules, but given the difficulties in interpreting the new rules as well as the breadth of the required changes, much work remains. Moreover, these expenditures of resources may ultimately prove to have been unnecessary if the rules are reversed or modified after the Commission's review of pending petitions for reconsideration or following court review. If the rules are modified or eliminated, we would then expend further resources undoing many of the onerous changes that we had undertaken. I describe in greater detail below each of these two ways in which ABCCNG and ABC Kids will be harmed.

11. The new promotion rule will have an obvious and direct negative effect on ABCCNG's and ABC Kids' basic business model. The new rule will either reduce the number of commercials that we can run or reduce the amount of time that we can spend promoting our programs. This is problematic for several reasons. The television business model is based on the ability to promote new and upcoming programs. If we cannot promote our programs in

accordance with this established model, we consider it likely that our programs would not perform as well, meaning a decline in viewership and ratings and fewer advertising dollars to support the creation of new children's programming—E/I and non-E/I. And, if we reduce our commercials to allow for show promotions, we will lose paid advertising, which, again, will mean less money for children's programming.

12. Reducing promotions hampers our ability to put forth our channel as a quality brand that children and parents can rely upon for enriching and entertaining family programming. Viewers depend upon us to notify them of what we are showing and when we are showing it. If we are hampered in our ability to provide viewers with this information, we will be less likely to attract and keep loyal viewers for our shows. Furthermore, our promotions not only feature particular shows but more broadly present our channels as a “home” for high-quality, diverse, family-friendly television. If our networks must drastically curtail or eliminate their promotions, then parents and children will be less likely to consider our programming when selecting among the vast array of video programming providers—including purveyors of video games and movies. Such a reduction in consumer goodwill will, in my view, cause significant, permanent and unquantifiable harm to ABCCNG. Even if the rules are eventually reversed or otherwise modified upon reconsideration or appeal, it is likely that the viewing habits of a portion of our audience will be irretrievably altered.

13. The tradeoff between accepting advertisements to fund our programming and running promotions to notify viewers of our programming will put ABCCNG and ABC Kids at a considerable disadvantage vis-à-vis direct competitors that are not subject to such constraints: namely, public television, commercial television not aimed at children, and producers of children's video entertainment. Because public television is not subject to the mandatory

commercial limits, public television stations may run an unlimited number of promotions, even if such promotions do not promote E/I programming or even children's programming. Likewise, we will be placed at a disadvantage as compared to television programming that is aimed at families, including but not primarily directed at children 12 or younger, and thus not subject to the commercial-matter limitation. Such programming will be able to be promoted more effectively because it will not be constrained by the new promotion rule. Finally, producers of children's video entertainment—such as video games and movies—obviously are not impacted by the new rule. Their promotional activities will continue undiminished even as we are forced to reduce our own, putting ABCCNG and ABC Kids at a significant competitive disadvantage.

14. Compounding the harm is the fact that there is no good way for us to recapture viewers lost by reducing our promotions. For obvious reasons, it is uniquely effective for us to promote our own programs on our own channel. Because these viewers are already watching one of our programs, it stands to reason that they might like to learn about our other programs.

15. Nor can we promote our shows as effectively in print media. Much of our intended audience is too young to know how to read. And those who can read are likely to be reading children's books, not the commercial newspapers and magazines in which we purchase space to promote our non-children's programming.

16. The new rule will also impose significant operational burdens on us. One large component of the new operational burden is the need to distinguish between promotions for E/I programming and promotions for non-E/I programming. This is the first time cable operators, and thus cable programmers such as ABCCNG, have been required to apply the E/I classification. Unlike broadcasters, which have been required to follow the core E/I

programming requirements since 1996 and have existing rules and procedures in place, ABCCNG has never attempted to determine which of its cable programming qualifies as E/I.

17. We are forced to engage in this exercise now because the new rule provides that promotions for E/I programming will *not* count towards the CTA commercial time limits, whereas promotions for all other programming—including highly valuable, age-appropriate, family-friendly programming on the same channel—*will* count towards the commercial time limits. To determine which promotions qualify as E/I, we will need to carefully assess the programs (e.g., series and movies) that we are promoting and determine whether the underlying programs are E/I. We will also need to develop systems to track and tally the two types of promotions separately to ensure compliance with the CTA.

18. Applying the E/I requirement to ABCCNG is much more burdensome than applying it to broadcasters. In the broadcast context, children's television programming is generally limited to a few hours per week. By contrast, ABCCNG's children's networks and programming blocks run approximately 20,000 hours of children's programming per year. ABCCNG will also need to establish a process for reviewing all programming on a going forward basis to determine whether it qualifies as E/I. This review process will require an enormous amount of time, labor and money.

19. Responsibility for compliance with the new rule will begin with ABCCNG's Standards and Practices Department ("S&P"). For the first time, S&P must assess the entire ABCCNG library to determine which programs—including series, original movies, and acquired programs—might qualify as E/I programming and which do not. S&P will first need to create guidelines and procedures for qualifying E/I programs and then must determine whether



thousands of hours of programming meet these guidelines. This process will impose tremendous demands upon staff time and effort.

20. After all of the programming is classified as either E/I or non E/I, S&P will need to assess nearly everything that might be considered a *promotion* for ABCCNG programming, as well as short-form programming (e.g., interstitials). The library of material that is neither long-form programming nor traditional third-party advertising includes well over 5000 different programming, promotional, informational and formatting elements, including, but not limited to, regular promotional announcements, program menus that list upcoming programs in a particular day part, program/commercial separators (a.k.a. “bumpers”) and network IDs. Since the requirement to distinguish between promotions for E/I and non-E/I programs did not previously exist, S&P will now need to determine whether each of these spots qualifies as a “promo” and, if so, whether it relates to an E/I or non-E/I program.

21. Once S&P has completed its review, the reclassified programming and promotional material will need to be recoded, re-filed and rescheduled in the programming and scheduling databases, which are then used to create a traffic log. A traffic log is a schedule that includes all necessary air times and restrictions for programs, promos, commercial and other on-air elements. An accurately coded traffic log is essential to comply with FCC rules, e.g., properly restricting commercial content, avoiding program-length commercials, etc.

22. Three different departments enter information for the traffic log: the Programming Department enters information regarding the scheduling of long-form programs (e.g., series and movies); the Media Scheduling Department enters information regarding the scheduling of promotional material; and the Traffic Department (“Traffic”) enters information regarding the placement of commercials and combines all of the programming and promotional scheduling

information onto a single log to ensure compliance with FCC rules. Different information needs to be stored and classified for programs, promotional material, and commercials, so there are different computer systems and databases for each type of material. Each of these systems has its own codes. Because the requirement never existed before, ABCCNG currently does not have codes for E/I programming, so we will need to create them, and then apply them to each piece of programming and promotional material in each of the databases. However, since we do not have an automated system for inputting and applying the new E/I codes, we will need to do it manually. In addition, we will need to either upgrade our computer software or purchase new software to accommodate the new E/I codes. The creation and application of the new codes will then need to be quality-checked. This entire recoding process will be extremely burdensome and costly, and will take an incalculable amount of time to complete.

23. In addition to compiling the traffic log, Traffic is responsible for monitoring the log to make sure there are no violations of the FCC rules. With non-E/I promotions counting towards the commercial time limits, there will be a drastic increase in the volume of material that Traffic will need to monitor in order to ensure that we do not exceed the commercial time limits. Because at present there exists no automated system for performing this function, it will have to be done manually. To meet these challenges, Traffic, and other affected departments, will need to train additional staff.

24. The Operations Department takes information from the traffic log, and makes sure the tapes containing the proper programming material are loaded onto the server and transmitted to the satellite. Operations matches codes on the log to those on the tapes. Therefore, once the codes on the logs change, we will need to change the codes that are embedded on all of the tapes. Changing the codes on the tapes will be a particularly onerous process for the thousands of

promotions in our library. First, tapes with the new codes must be created. Then, the new tapes must be placed on the server in real time, re-filed, and assigned new identification numbers. We will also need to develop a computer application to make sure that programming containing the old codes is “killed” so that it is not accidentally used. We estimate that these changes will take thousands of hours and incur considerable costs.

25. The new promotion rule will also lead to significant changes to long-established television production, promotion and programming practices. To comply, our On-Air Promotions Department (“OAP”) will have to edit a substantial amount of existing promotional material and create new promotional material. This will be extremely expensive and will result in a confusing, less informed, less diverse and less enriching viewer experience. For example, it is common to create a promotion that promotes a particular “day part” or “block.” This promotion may include some programs that are E/I and some that are not. The new rules do not provide guidance on how such a promotion should be classified. Therefore, we may have to either change our programming by segregating E/I blocks from non-E/I blocks or change the way we promote our shows (i.e., a promotion for each show instead of a block promotion ). If we segregate E/I blocks from non-E/I blocks, then children who are initially drawn to non-E/I shows will be less likely to happen upon, and come to appreciate, our E/I programming. Similarly, if we cannot promote blocks that include both non-E/I and E/I programming, then we are less likely to be able to encourage children who normally view non-E/I programming to take a chance on an E/I show.

26. In addition to the cost of editing existing spots, the promotion rule will require us to spend substantial amounts to produce new short form programs so that we can maintain continuous programming on our networks. The programming in ABCCNG’s library is usually

of set time duration—for example, one hour of programming may consist of two 22-minute episodes (a total of 44 minutes), which leaves 16 minutes of time that must be filled. Of those 16 minutes, 10.5 to 12 minutes will be filled with promotions and commercials, leaving up to 5.5 minutes per hour to fill with non-commercial content. If we cannot use existing promotions to fill the remaining minutes because they would be counted as commercial time and exceed CTA time limits, we will have to create new qualifying short-form program material to fill these gaps, thus incurring significant costs.

**The New Website Rules Are Confusing And Will Harm Our Ability To Inform Children And Their Parents About The Unique And Enriching Content Available At Our Websites**

27. With more and more children going online every day, our children's television network websites continue to be a safe harbor on the Internet for children and their families. These free destination sites are designed to extend the TV channel experience for children through age-appropriate games, and through editorial, promotional, educational and informational, and pro-social content. These sites, which are regulated by strict internal standards and practices, offer the highest quality online entertainment that children find engaging and parents find worthy of their trust.

28. Our website also enables us to promote, and build brand loyalty to, quality programming before it debuts on our networks. For example, the Playhouse Disney section of our website currently features a section on "Little Einsteins," an exciting, educational program created jointly by Disney and Baby Einstein, scheduled to debut in October, that combines animation, real-life photography, and famous music and artwork with instantly likeable characters who have a passion for music and adventure. The website enables children to paint and color along with the characters while listening to the music of Mozart and Dvořák.

29. We are equally proud of our award-winning “Surf Swell Island” section, which is a place on the Internet where children, parents and teachers alike can learn about Internet safety. Surf Swell Island site is a quiz-driven adventure game that presents Internet safety material in a series of three games, each featuring a classic Disney character and focusing on an area of concern: privacy, viruses, or netiquette (guidelines for behavior on the Internet). A mini-quiz follows each of the three games, reinforcing what was presented.

30. In addition, Disney devotes sections of its website to popular characters from Disney Channel’s Playhouse Disney programming block, including “Bear in the Big Blue House,” “JoJo’s Circus,” “Higglytown Heroes” and “Stanley,” among others. These areas of the website are full of interactive experiences designed to encourage learning through play. Another section of our website features ABC Kids shows, including the E/I shows “That’s So Raven,” “Lilo and Stitch,” and “The Proud Family,” and encourages children to identify with their favorite characters through an array of fun and stimulating games and activities.

31. These are just a few examples of the myriad ways in which children who learn about and visit our website gain the opportunity to access additional enriching material not available on television, or to learn about enriching material that *is* available on television.

32. Parents also specifically benefit from visits to our website. Our “Guide to Grownups” section includes a diverse array of educational activity for parents to participate in with their children, including activities designed to help children about, among other things, counting skills, the world of animals, and basic story-writing skills. The site also includes materials designed to encourage parents to read to their children.

33. Through stringent S&P review, we always strive to make sure that every website that is accessed by clicking on an advertisement on our websites is compliant with the Children’s

Online Privacy Protection Act. We also employ commercial separation and identification policies to ensure an informed experience for our young users. However, online advertising is necessary to help fund our free websites and promote the products and services of our corporation.

34. The website reference rule will make it difficult for us to enable children and their families to benefit from these enriching online experiences within the context of a free destination site. If we choose to comply by removing URLs from our programming, then children and their parents will be deprived of their best opportunity to learn about the valuable content available on our website. Clearly, the best and most effective way to promote a website geared to our children's programming is to feature it on the programs themselves. Without this option, our ability to serve the needs of children and parents will be diminished, and we will suffer a very real loss of their loyalty and goodwill.

35. Alternatively, if we choose to comply by counting website reference time toward our commercial time limit, we will suffer a substantial financial loss. Because the children's websites are designed primarily to build viewer loyalty via enriching content, it is unlikely to prove as economical as commercial advertising and therefore would likely be sacrificed first.

36. The third option, revising our website to comply with the four-prong test, is also disruptive. This test is very confusing, in part because it fails to define many of its key terms. For example, we do not know how what it means to provide a "substantial amount of *bona fide* program-related or other noncommercial content," nor do we understand the scope of the term "other menu pages" in the test's third prong. Must programmers label all web pages with a menu on them? Is a menu a list of options or terms? Must a menu include links to other web pages? The multiple references to "commercial" material are just as confusing, especially in light of the

promotion rule, which qualifies as “commercial” the mere act of informing children and parents about our programming. Finally, the four-part test repeatedly refers to a “website” without providing a definition. A website might include (1) only the first page that appears when the URL is entered; (2) all pages that are owned by the company that owns the URL; (3) all pages within the same domain (e.g. within Disney.com); or (4) all URLs relating to the children’s programming at issue. These rules give such little guidance that it is likely that we will have to either err on the side of forgoing valuable content in order to ensure compliance, or devise a reasonable good-faith interpretation would nonetheless carry legal risks. Either way, we will have to expend significant staff resources and incur additional costs in order to ensure that every single web page and every single link comports with the new four-part test.

37. However we choose to comply with the FCC’s unprecedented regulation of our Internet content, we may be forced to hamper the ability of parents and children to gain access to valuable information and activities. Furthermore, any changes to the website we make will cause us to suffer significant redesign costs and, in all likelihood, a decrease in advertising revenues. As a result, we will have less money to create valuable educational and entertainment experiences for our online users and television audiences.

38. The website host-selling rule would also have an adverse effect on our ability to produce high-quality online and television content for children and impose an unreasonable burden upon our staff. Although the rule says that we may sell program-related merchandise on our sites, the rule is so broad, and so unclear, that it could be interpreted to prevent us from displaying such merchandise if it contains characters from any Disney or ABC program. Depending upon how the rule is interpreted and enforced, even the mere presence of Mickey Mouse on a Disney website within, adjacent to, or on the same page as an ad or a synergy

message might cause concern. The rule will therefore hurt our ability to use our website to sell products—such as vacation packages—even to *adults*. A decrease in ancillary program revenues resulting from this rule would likely lead to a decrease in new online and television content, E/I and non-E/I alike. The costs of revamping our websites to comply with the host-selling rule could be significant.

39. Another potential problem with the website host-selling rule has to do with the acceptance of third party commercials containing website references. We may either have to prohibit third parties from referencing their websites in commercials we run on our children's networks or hire a trained staff to constantly police all websites referenced in third party commercials to ensure compliance with this rule. For example, if Mattel seeks to run during the ABC Kids show "The Proud Family" a Barbie commercial that contains a reference to Mattel.com, then we will have to determine (1) whether Mattel markets any products using characters from "The Proud Family"; (2) whether any such characters appear on Mattel.com; and (3) if such characters appear on Mattel.com, whether the appearance of such characters on this third party website will be deemed a violation by ABC Kids of the website host-selling rule. Because the answers to these questions may vary from week to week, we will have to be constantly vigilant in monitoring for compliance. This type of onerous regulation will be quite burdensome for Disney and will likely reduce the appeal of our programming to advertisers, which will hamper our ability to continue to provide quality children's programming.

40. Finally, if even a portion of the new FCC promotion and/or website rules are eventually modified or reversed, it is likely that ABCCNG and ABC Kids would then spend a significant amount of time and money changing their operating procedures again—either back to its current ones, which are more effective, economical and time-tested, or to comply with

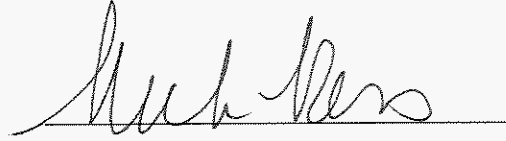


whatever the final rules may be. Time and money spent complying with the new rules will have been wasted. In addition, this will cause continued confusion among our television and website audiences.

41. Because of the numerous uncertainties, we cannot calculate the precise revenue loss or the additional cost to comply with the new FCC rules, but we can be sure that the total of coming into compliance, and ensuring continuing compliance, will be quite substantial.

Pursuant to Section 1.16 of the Commission's rules, I, Rich Ross, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on September 13, 2005

A handwritten signature in cursive script, appearing to read "Rich Ross", is written over a horizontal line.

Rich Ross